rect in summarily dismissing the suit and hearing no evidence thereon, and that, upon the basis of the pleadings heard by the trial Court, petitioner was not entitled to the relief sought.

In the case of *Caffarelli Brothers v. Lyons Brothers Bread Company,* 198 *Southwestern* 685 (Court of Civil Appeals, San Antonio), the Court holds:

> "It is the duty of this Court to presume that the issues made by the pleadings of the parties were consistent with the orders or rulings of the trial court which we find in the transcript in all cases originating in the Justice Court, where oral pleadings are allowed. Maass v. Salinsky, 67 Tex. 290, 3 S. W. 289; Silberg v. Trilling, 82 Tex. 523, 18 S. W. 591; Patty v Gibson, 23 S. W. 392; G. C. & S. F. Ry. Co. v. Goodman, 189 S. W. 326."

In the case of *Howell vs. Johnson,* 46 *Southwestern* (2d) 463 (Court of Civil Appeals, Beaumont), the Court said:

> "As the case originated in Justice Court, and as appellee filed no written pleadings in the County Court, we must presume, in the absence of an affirmative showing in the transcript to the contrary, that appellee's pleadings were sufficient to support the judgment in his favor and all conclusions of fact and law filed by the Court in support of his judgment. Alvis v. Harris Hdwe. Co., 218 S. W. 538, 539."

The trial Court, in its purported findings of fact and conclusions of law, sets out that it finds no facts, for the reason that the cause was determined on the pleadings. The trial Court stated that the plaintiff plead a cause of action arising under the Federal Fair Labor Standards Act for unpaid overtime wages, and that defendant's plea in abatement addressed to the case, as plead by petitioner, was sustained, and that the cause was dismissed, the Court having found as a matter of law that the cause should be dismissed for the follow-

ing reasons: (First) That defendant was not within the scope and regulations of the Federal Fair Labor Standards Act, in that defendant company was engaged in intrastate commerce; (Second) That defendant's services were done within the area of production of the crop commodity; (Third) That plaintiff was not employed by the defendant in excess of fourteen weeks during the entire year; and (Fourth) That defendant is engaged in compressing cotton and is exempt from the regulations of the Fair Labor Standards Act, (Tr. pp. 13-14).

The trial Court must pass upon the matters presented to it by the pleadings and, since the trial Court heard the pleadings and entered its order of dismissal, it must be presumed that the order of dismissal was justified, and that the Court was justified in making the findings of fact and conclusions of law as made by it. Any other rule, where a cause is submitted upon oral pleadings, would be to permit an Appellate Court to hear evidence and new pleadings, and substitute its judgment for that of the trial Court. The presumption is that the case was fairly heard and fairly disposed of upon the pleadings presented to the trial Court; petitioner has had his day in Court, has been deprived of no rights, and must abide the dismissal.

2. The order of dismissal below was a correct judgment, since petitioner has shown that he plead orally that his work with respondent was to transfer, by means of a tractor trailer, compressed cotton from the Port Compress Company's plant to various ships docked at the Port of Corpus Christi, bound to points outside the State of Texas, and, accordingly, he was entitled to no relief at time and a half for overtime under the Wages and Hours Act, but was subject to the regulations of the Interstate Commerce Commission, pur-

suant to the provisions of Section 304, of Title 49, U. S. C. A.

ARGUMENT — Point Two

In his summary statement petitioner shows the Court that his work with the Port Compress Company, respondent, was to transfer by means of a tractor trailer, cotton from the Port Compress Company's plant to various ships docked at the Port of Corpus Christi and in his brief (Page 11, Section B), petitioner stated that it could be proved, as alleged, that he transferred bales of compressed cotton from the respondent's plant a distance of approximately two miles to ships docked in the harbor at Corpus Christi, which ships subsequently carried the cotton to points outside the State of Texas, which facts were likewise alleged orally upon the trial.

It is obvious, under such state of facts, that petitioner cannot recover, for the reason that, under the provisions of the Fair Labor Standards Act of 1938, Chapter 676, Section 13, 52 Stat. 1060, Title 29, Section 213, U. S. Code and Amendments thereto, 29 U. S. C. A. Sec. 213, the petitioner and those in his class are specially exempted from the provisions of the fair Labor Standards Act.

Section 213, Title 29, U. S. Code, 29 U. S. C. A., Section 213, provides (so far as applicable):

> "(b) The provisions of Section 207 shall not apply with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service, pursuant to the provisions of Section 304 of Title 49. U. S. Code."

Section 304 of Title 49 U. S. Code, 49 U. S. C. A., Section 304, provides (insofar as applicable):

> "Powers and Duties of Commission. (a) * * * It shall be the duty of the Commission

* * * (3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation and to that end, prescribe qualifications and maximum hours of service of employees and standards of equipment. * * * "

In *Faulkner v. Little Rock Furniture Mfg. Co.*, 32 *Federal Supplement*, 590, *at* 591, the Court, after quoting the above statutes in a case where plaintiff was an assistant truck driver or helper employed in delivering goods, wares and merchandise manufactured by the defendant, and in bringing to defendant from out of the State certain raw materials and supplies, from which it manufactured furniture, held:

"Congress, by legislation, having empowered the Interstate Commerce Commission, if need is found, to prescribe maximum hours of service for employees situated as the plaintiff and exempted them from the provisions of the Fair Labor Standards Act of 1938, there is presented a different situation from that where, by the Constitution of the United States, the States have delegated the power to Congress to legislate upon a subject, but where Congress has failed to do so and left the field unoccupied, in which event, it has been uniformly held that the States themselves have a right to legislate upon the subject. In such a case, which is clearly a delegation of authority, there is impliedly a reservation of authority in the States to legislate upon the subject, until such time as Congress sees fit to act."

"In Sec. 213(b), Title 29, U. S. Code, 29 U. S. C. A., Section 213(b), there is no such reservation, and none can be implied, and it appearing that under the provisions of Section 304 (a) (3) of Title 49, U. S. Code, 49 U. S. C. A., Sec. 304 (a) (3), Congress has delegated to the Interstate Commerce Commission the power to make regulations for qualifications and maximum hours of service for such employees, the whole field is occupied, and it further appearing that under the provisions of the Fair Labor Standards Act of 1938, as

amended (August 9, 1939, Chap. 605, 53 Stats. 1266, 29 U. S. C. A. Sec. 213), the regulation of qualifications and maximum hours of service of employees with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service, have been exempted from the provisions of the Fair Labor Standards Act of 1938, there is and could be no reservation of power for the administrator of the Fair Labor Standards Act of 1938 to act, until such time as the Interstate Commerce Commission shall see fit to act. * * * "

"That the Interstate Commerce Commision has power to fix maximum hours of service if need is found, and if they have not done so, no power is reserved or delegated to the administrator of the Fair Labor Standards Division of the Department of Labor to do so, and the employees acquire no rights under the Fair Labor Standards Act of 1938. Therefore, the plaintiff cannot recover and this action under the maximum hours section of the Fair Labor Standards Act of 1938 must be and is dismissed."

It is recognized by petitioner in his brief (pp. 12-13), that Section 207 (c) of the Fair Labor Standards Act provides:

"In the case of an employer engaged in * * * the ginning and compressing of cotton * * * the provision of subsection (a) (which subsection provides an employee shall be paid at the rate of one and one-half times his regular rate of pay for all hours worked in excess of forty-four hours in any one week) shall not apply to his employee in any place of employment where he is so engaged; * * * "

But petitioner contends that the exemption applies only to employees *in* the place of the compressing operations, or so closely associated therewith as to be a part of the compressing operations and that, accordingly ,an employee such as petitioner is excluded from the exemption, because he is an employee performing

a non-associated function, that of driving loaded tractors from the compress plant and warehouse to the ship docks. It is obvious that petitioner, in his anxiety to place himself in a non-associated function of compressing, has clearly placed himself as the operator of a motor vehicle of a private carrier, carrying property into commerce and, accordingly, excludes himself from the provisions of the Fair Labor Standards Act, by so placing himself within a field occupied by the Interstate Commerce Commission.

Accordingly, since the order of dismissal entered by the trial Court is clearly correct, on the theory that petitioner is entitled to no relief under the Wages and Hours Act, as sought by him, the order of dismissal should not be disturbed, irrespective of the reasons entertained by the trial judge in entering the order. In other words, a correct result having been reached by the trial Court, it will not be disturbed, even though the trial Court may have entertained an improper reason for its entry at the time.

CONCLUSION

The record indicating no miscarriage of justice but a correct ruling, respondent submits that the petition should be denied.

Respectfully submitted,

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